



BOARD OF EQUALIZATION

BUSINESS TAXES COMMITTEE MEETING MINUTES

HONORABLE JOHN CHIANG, COMMITTEE CHAIR

450 N STREET, SACRAMENTO

MEETING DATE: MARCH 14, 2000, TIME: 1:30 PM

ACTION ITEMS & STATUS REPORT ITEMS

Agenda Item No: 1

Title: Proposed Regulatory Changes to Clarify Application of Tax to Transactions by Architects and Others (Regulation 1506)

Issue/Topic:

Should Regulation 1506, *Miscellaneous Service Enterprises*, be amended to clarify the application of tax to transactions by architects and others?

Committee Discussion:

Action 1 – Consent Items

The Committee was addressed by Mr. Kurt Cooknick of The American Institute of Architects, California Council who expressed agreement with the proposed amendments to Regulation 1506 and praise for staff's cooperation and professionalism.

Action 2 – Authorization to Publish

There was no discussion of Action Item 2.

Committee Action/Recommendation/Direction:

Action 1 – Consent Items

The Committee authorized staff to add subsection (a), *Licensed Architects*, to Regulation 1506, and to make minor technical revisions.

Action 2 – Authorization to Publish

The Committee directed staff to request authority to publish the proposed amendments to Regulation 1506. There is no operative date, and implementation will take place upon approval by the Office of Administrative Law. A copy of the proposed amendments is attached.

Agenda Item No: 2

Title: Proposed Regulatory Changes to Clarify Application of Tax to Leases of Houseboats (Regulation 1661)

Issue/Topic:

Should Regulation 1661 be amended to clarify the application of sales and use tax to leases of houseboats and incorporate the list of mobile transportation equipment (MTE) specified in Revenue and Taxation Code (RTC) section 6023?

Committee Discussion:Action 1 – Consent Items

There was no discussion of Action Item 1.

Action 2 – Classification of Houseboats

Staff provided background on the inclusion of ships in the definition of MTE, and the criteria for vessels to be 30 feet or more in length to meet the definition of “ships” in Regulation 1661. Staff also noted that Regulation 1661 defines MTE to include only equipment for use in transporting persons or property for substantial distances. In 1973, staff concluded that houseboats are not MTE, even if over 30 feet in length, since they are not the kind of property that are designed to carry persons or property for substantial distances. Committee Members questioned the basis of the decision that houseboats are excluded from the definition of MTE. Committee Members stated that houseboats are used in transporting persons and observed that the underlying statute does not mention “substantial distances” as a criteria for MTE. Staff noted that the Board has the authority to define ships.

Action 3 – Authorization to Publish

Staff requested a delay in publication since the effective date of the prior approved regulation changes will not be until May 28, 2000.

Committee Action/Recommendation/Direction:Action 1 – Consent Items

The Committee approved the consent items.

Action 2 – Classification of Houseboats

The Committee approved Alternative 2, which proposes an amendment to recognize that houseboats are ships when 30 feet or greater in length, and thus, are MTE. The Committee directed that there be no operative date.

Action 3 – Authorization to Publish

The Committee directed staff to request authority to publish amendments to Regulation 1661(a)(1) by incorporating the list of MTE specified in Revenue and Taxation Code section 6023, and by amending the regulation to recognize that houseboats are ships when 30 feet or greater in length, and thus, are MTE. The Committee approved staff's recommendation to delay the publication of the approved amendments until the previous amendment to Regulation 1661 is approved by the Office of Administrative Law and becomes effective. A copy of the proposed amendments is attached.

Approved: /s/ John Chiang
Honorable John Chiang, Committee Chair

/s/ E. L. Sorensen Jr.
E. L. Sorensen, Jr., Executive Director

BOARD APPROVED

at the 3-16-00 Board Meeting

/s/ Janice Masterton
Janice Masterton, Chief
Board Proceedings Division

Regulation 1506. Miscellaneous Service Enterprises.

(a) Licensed Architects.

(1) In General. Fees paid to licensed architects for their ability to design, conceive or communicate ideas, concepts, designs, and specifications are not subject to tax. Any plans, specifications, renderings or models or other instruments of service provided by a licensed architect under a licensed architect's contract or commission are integral to the licensed architect's services and are not subject to tax. The licensed architect is the consumer of any tangible personal property, including plans, specifications, renderings or models, used or transferred in the performance of professional services notwithstanding the fact that a fee may be added to the cost of the property and separately stated on a billing to the customer. If after the completion of the contract or commission the licensed architect provides additional copies of the original plans or specifications, or any models or renderings of an existing structure, the architect is regarded as making a sale of such copies, models or renderings.

(2) Licensed Architect. A "licensed architect" is defined under the Business and Professions Code Chapter 3, Division 3, Section 5500 as follows:

"As used in this chapter, architect means a person who is licensed to practice architecture in this state under the authority of this chapter."

A licensed architect preparing or being in responsible control of plans, specifications, and instruments of service is required to affix to those plans, specifications, and instruments of service their stamp or seal which bears the licensee's name, his or her license number, the legend "Licensed Architect" and the legend "State of California," and which shall provide a means of indicating the renewal date of the license.

(3) Architectural Perspectivists and Modelers. Architectural perspectivists do not act as "licensed architects." Architectural perspectivists are the retailers of renderings, prints and drawings they provide to architects or other consumers and tax applies to their entire charge for such items. Modelers do not act as "licensed architects." Modelers are the retailers of models they provide to architects or other consumers, and tax applies to their entire charge for such items.

(4) Licensed architects who produce renderings, prints, drawings or models pursuant to a contract that includes professional architectural services are not retailers of the renderings, prints, drawings or models they provide pursuant to that contract for architectural services. Tax does not apply to their charge for such items.

(ab) Barbers, Beauty Shop Operators, Shoe Polishers, Launderers and Cleaners.

(1) In General. Barbers, beauty shop operators, shoe polishers, launderers and cleaners are the consumers of the supplies and other property used in performing their services, and tax applies with respect to the sale to them of the supplies and other property. They are retailers, however,

of any such supplies or of used articles or other tangible personal property which they sell to consumers in the regular course of business, and tax applies to the gross receipts from such sales.

(2) Rentals. Launderers and cleaners are the consumers of linen supplies and similar articles, including towels, uniforms, coveralls, shop coats, dust cloths, and similar items, rented to others when an essential part of the rental contract is the furnishing of the recurring service of laundering or cleaning of the articles rented, and tax applies with respect to the sale to them of such articles.

(b~~c~~) Circulating Libraries. When circulating libraries, which are engaged in the business of renting books to others, pay tax measured by the purchase price of such books either to the person from whom the books are purchased or to the board, tax does not apply to the amount charged for the rental of such books. Such libraries are retailers of new or used books which they sell to consumers in the regular course of business, and tax applies to the gross receipts from such sales.

(e~~d~~) Dentists and Dental Laboratories. Dentists are consumers of the materials, supplies, dental laboratory products and other tangible personal property which they use in performing their services. Tax, accordingly, applies to the sale of the tangible personal property to them.

Dental laboratories are the retailers of the plates, inlays and other products which they manufacture for dentists or other consumers. Tax applies to their entire charges for such products regardless of whether a separate charge or billing is made for materials and manufacturing services.

(d~~e~~) Gun Clubs. Gun clubs are consumers, not retailers, of clay pigeons or blue rocks furnished to members or patrons in connection with trapshooting or similar sports even though the charge for the service is measured by the number of clay pigeons or blue rocks used. The tax applies with respect to the sale of such property to the clubs.

(e~~f~~) Licensed Hearing Aid Dispensers. Persons licensed as hearing aid dispensers by the Department of Consumer Affairs, Hearing Aid Dispensers Examining Committee, are consumers of hearing aids furnished or sold by them. The term "hearing aid" includes any necessary accessory or component part of the hearing aid which is fully worn on the body of the user such as cords, connector tubing, ear molds, or batteries, whether the part is sold or furnished separately or in conjunction with the hearing aid. The term also includes replacement and repair parts. Tax applies with respect to the sale of such products to licensed hearing aid dispensers.

Tax applies to the retail sale of such products by persons who are not licensed hearing aid dispensers.

(f~~g~~) Summer Camps. The tax applies to gross receipts from the sale of meals or other tangible personal property at summer camps, whether operated by municipal or private corporations, or other parties. When a camp qualifies as a school or educational institution, tax, with respect to meals, applies in the same manner as to schools and educational institutions. To qualify as a

school or educational institution for purposes of this regulation, the camp must conduct regularly scheduled classes, with required attendance, in charge of qualified instructors.

If a single charge is made for all of the privileges extended by the camp, a segregation must be made and the tax returned on that portion of the total charge representing taxable receipts from the sale of meals or other tangible personal property. In the absence of such a segregation, the taxable receipts from the sale of meals or other tangible personal property shall be determined by the board based on information available to it.

(gh) Taxidermists. Taxidermists are consumers of the materials used in repairing, stuffing and mounting skins, heads, etc., of animals, birds, fish, and the like furnished by their customers, and tax applies with respect to the sale of such property to them. If, however, a separate charge for such property is made on the invoices to the customers at the fair retail selling price, the taxidermist is the retailer of the property and tax applies to such separate charge.

Tax applies to retail sales by taxidermists of skins, heads, mountings or other tangible personal property.

(hi) Licensed Veterinarians.

(1) Definitions. As used herein:

(A) The term "licensed veterinarian" means any person licensed as a veterinarian by the California Department of Consumer Affairs, Board of Examiners in Veterinary Medicine.

(B) The term "drugs and medicines" includes substances or preparations intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals and which is commonly recognized as a substance or preparation intended for this use. The term includes legend drugs, pills and capsules (other than vitamins), liquid medications, injected drugs, ointments, vaccines, intravenous fluids, and medicated soaps if those soaps are available only to veterinarians. The term does not include vitamins, shampoos, pet foods, prescription diet foods, artificial diets, flea powders, and flea sprays.

(C) The term "professional services" includes the diagnosis and treatment of disease or trauma in animal life. It also includes the administration of drugs and medicines by means of, for example, injection, intravenous solution, or oral or bodily application.

(2) Application of Tax.

(A) Licensed veterinarians are consumers of drugs and medicines which they use or furnish in the performance of their professional services. Accordingly, tax does not apply to a licensed veterinarian's charges to clients for such drugs and medicines, whether or not separately stated. Licensed veterinarians are also consumers of tangible personal property, other than drugs and medicines, which they use or which they furnish to clients without a separately stated charge. Tax applies to the sales of such drugs, medicines and other items to licensed veterinarians except:

1. ~~Effective~~ Operative April 1, 1996, drugs or medicines which are purchased to be administered to animal life as an additive to feed or drinking water of food animals (as defined in Regulation 1587 (18 CCR 1587), “Animal Life, Feed, Drugs and Medicines”) or of non-food animals which are being held for sale in the regular course of business, and the primary purpose of the drugs or medicines is the prevention and control of disease, or

2. ~~Effective~~ Operative January 1, 1997, drugs or medicines which are purchased to be administered directly (e.g., orally, by injection, or by application to the body) to food animals and the primary purpose of the drugs or medicines is the prevention or control of disease. Veterinarians remain consumers of drugs and medicines administered directly to non-food animals.

(B) Licensed veterinarians are retailers of drugs and medicines which they furnish for a consideration without performing specific related professional services. Licensed veterinarians are also retailers of tangible personal property, other than drugs and medicines, which they furnish to clients for a separately stated charge. Unless otherwise exempt, tax applies to charges made by licensed veterinarians to clients for such drugs, medicines and other items. See Regulation 1587 (18 CCR 1587), “Animal Life, Feed, Drugs and Medicines” for exemption for sales of feed, drugs, or medicines for certain animals. Tax applies to separately stated charges made for X-rays if the X-rays are delivered to clients.

Note: Authority cited: Section 7051, Revenue and Taxation Code.
Reference: Sections 6006, 6007, 6015, 6018.1, 6018.7, 6358, 6358.4 and
6363, Revenue and Taxation Code.

Regulation 1661. Leases of Mobile Transportation Equipment.

Reference: Sections 6006, 6006.1, 6006.3, 6006.5, 6009, 6010, 6010.1, 6011, 6012, 6016.3, 6023, 6024, 6092.1, 6094, 6243.1, 6244, 6352, 6390, 6391, 6407 and 6457, Revenue and Taxation Code.

(a) Definitions.

(1) “Mobile Transportation Equipment”. The term “mobile transportation equipment” includes only equipment for use in transporting persons or property for substantial distances, such as railroad cars and locomotives, buses, trucks (except “one-way rental trucks”), truck tractors, truck trailers, dollies, bogies, chassis, reusable cargo shipping containers, aircraft and ships, and tangible personal property which is or becomes a component part of such equipment. The term does not include items of a kind commonly used only in loading or unloading persons or property, or short distance moving within the confines of a limited area, such as a loading dock, warehouse, terminal, bay or airport. Examples of such items are hand dollies, forklift trucks, mine cars, pilot boats, tugboats and lighters, not including, however, lighters or barges specifically designed to be carried regularly aboard vessels for substantial distances. The term does include pickup trucks and tangible personal property which is or becomes a component part of mobile transportation equipment.

The following items are specifically excluded from the definition of mobile transportation equipment:

(A) Passenger vehicles as defined in section 465 of the California Vehicle Code;

(B) Trailers and baggage containers designed for hauling by passenger vehicles; and

(C) One-way rental trucks. These vehicles are motor trucks of a kind required to be registered under the Vehicle Code, not exceeding the manufacturer’s gross vehicle weight rating of 24,000 pounds, which are principally employed by a person in the rental business in being leased out for short-term periods of not more than thirty-one (31) days to individual customers for one-way or local hauling of personal property of the customers, and which upon acquisition or being employed in this state by the person, are identified to the board by reporting tax measured by rental receipts on a timely return for the first reporting period in which the truck is leased and maintaining records which can be verified by audit of the vehicles as to which such an election has been made.

Upon the leasing of such a truck to a customer, the lessor shall make known to the customer the fact that the vehicle is designated as a one-way rental truck and any taxes which are imposed are measured by the rentals. Once a truck is identified to the board as a one-way rental truck, the election may not be revoked with respect to the equipment as to which it is made. However, failure of the lessor to make such a timely election will cause such vehicles to be classified as mobile transportation equipment.

(2) “Bogie”. The term “bogie” means a vehicle consisting of an axle or axles with wheels and tires with a device mounted on its frame to support a container (van body) as an undercarriage. It acts as wheels for and in conjunction with the container (or van body). Bogies are specifically designed to couple under a container temporarily for highway use, being detachable when not

required. Bogies may be designed and constructed so as to allow a sliding movement under a container (or van body) to several positions under the container to adjust to desired axle loading.

(3) “Chassis”. The term “chassis” means a frame with one or more axles designed to be used in conjunction with and as a temporary support or undercarriage for a container or other van-type box. The chassis and axle or axles may be designed and constructed so as to allow a sliding movement for extending the chassis to allow the carriage of various length bodies or to allow movement of one or more axles to any given position under the container. When operated as a semitrailer, the front portion of the container and chassis is attached to a motor vehicle or dolly.

(4) “Dolly”. The term “dolly” means a vehicle consisting of a tongue, fifth wheel and axle equipped with wheels and tires to be connected to a semitrailer so as to support the front end of the semitrailer, including a portion of the cargo thereon, but which is not permanently attached to the semitrailer.

When coupled to the semitrailer by its fifth wheel (which is mounted on the frame) and to a trailer by the tongue, the semitrailer becomes in effect a “full” trailer. A dolly may also be designed and used as the third or rear axle of a two-axle tractor to act as an additional axle to support a portion of the weight of a towed semitrailer and any load thereon, thus reducing tractor axle loads. Pole, pipe, and logging dollies consist of a tongue, bolster and axle or axles equipped with wheels and tires. When connected to a motor vehicle by its tongue, or by the cargo, this type of dolly is used to transport long poles, timbers, logs, pipes or structural materials with the rear end of the cargo resting on the dolly bolster and the front end on the motor vehicle.

(5) “Ships” The term “ships” includes vessels, such as trawlers, fishing boats, sailboats, yachts, and houseboats, which are 30 feet or more in length. The term does not include vessels less than 30 feet in length.

(b) Application of Tax.

(1) With respect to leases of mobile transportation equipment, the sale to the lessor is the retail sale and the lessor is the consumer of the equipment. Accordingly, either the sale of the equipment to the lessor or its use in this state may be subject to tax. For example, if the sale and delivery occur within California, the transaction is subject to sales tax unless the lessor makes a timely election to report his or her tax liability measured by the fair rental value as provided in (b)(2) below. On the other hand, if the sale and delivery occur outside California and the property is purchased for use in California, use tax will apply measured by the purchase price unless the equipment enters the state in interstate commerce and is used continuously thereafter in interstate commerce, or the lessor makes a timely election to report use tax liability measured by the fair rental value as provided in (b)(2) below.

If in connection with an assignment of an existing lease of mobile transportation equipment, title to the leased property is transferred to the assignee, the transfer is a sale to the assignee and the assignee is the consumer of the equipment. Application of tax is governed by the rules set forth in this section (b)(1).

(2) If the use of mobile transportation equipment purchased under a resale certificate is limited to leasing the equipment, the purchaser may elect to pay his or her use tax liability measured by

the fair rental value if the election is made on or before the due date of a return for the period in which the equipment is first leased. The election must be made by reporting tax measured by the fair rental value on a timely return for that period. Tax must thereafter be paid with the return for each reporting period, measured by the fair rental value, whether the equipment is within or without this state. The election may not be revoked with respect to the equipment as to which it is made. Any separately stated amount collected from a lessee by a lessor electing to report use tax measured by fair rental value under the representation by the lessor that the amount is use tax imposed on the customer must be returned to the customer or paid to the board. A designation by the lessor of a separately stated amount as “use tax”, without further explanation, will be regarded as a representation that the amount is use tax imposed on the customer.

This election is available to any purchaser who leases mobile transportation equipment, other than a person exempt from use tax under Revenue and Taxation Code Section 6352, and such purchaser may properly issue a resale certificate for the limited purpose of reporting use tax liability based on fair rental value.

(A) Fair Rental Value. “Fair rental value” means the rentals required by the lease, except where the Board determines the rental receipts are nominal. Fair rental value does not include any payment made by the lessee to reimburse the lessor for the lessor’s use tax, whether or not the amount is separately stated, and regardless of how the charge is designated in the lease documentation and invoices. Lump-sum charges to the lessee will be assumed to include reimbursement for the lessor’s use tax whether or not any statement to that effect is made to the lessee.

Example:

Assuming a 6 percent tax rate, if the invoice to the lessee states “rental \$100, tax reimbursement to the lessor \$6”, “rental \$100, sales and use taxes \$6”, or similar wording, the fair rental value is \$100. If the invoice to the lessee states “rental \$106” and makes no reference to reimbursement, the fair rental value is \$100 (\$106 divided by 1.06). Assuming a 6.5 percent tax rate, the fair rental value is \$99.53 (\$106 divided by 1.065).

Fair rental value includes any deficiency payment required from the lessee on disposition of mobile transportation equipment at the termination of an open-end lease and such payment is subject to tax. Any surplus rentals, however, which are returned to the lessee at the termination of an open-end lease may be deducted from the total fair rental value reported for the period in which the surplus rentals are returned. In the alternative, a refund may be claimed for any tax paid within the applicable statute of limitations period on such surplus rentals.

Fair rental value includes any capitalized cost reduction payment, which is a one-time payment by the lessee at the start of the lease to reduce the lessor’s investment and the lessee’s rentals. The payment may either be reported for the period in which it became due from the lessee or it may be reported in equal increments over the lease term. On early termination of such a lease, any unreported portion of the capitalized cost reduction payment shall be reported for the period in which termination occurred.

The term “fair rental value” includes any payments required by the lease, including amounts paid for personal property taxes on the leased property, whether assessed directly against the lessee or against the lessor, but do not include amounts paid to the lessor for:

(1) Collection costs, including attorney’s fees, court costs, repossession charges, and storage fees; but tax does apply to any delinquent rental payments, including those collected by court action;

(2) Insuring, repairing or refurbishing the leased property following a default;

(3) Costs incurred in defending a court action or paying a tort judgement arising out of the lessee’s operation of the leased property, or any premiums paid on insurance policies covering such court actions or tort judgements;

(4) Costs incurred in disposing of the leased property at expiration or earlier termination of the lease.

(5) Late charges and interest thereon for failing to pay the rentals timely;

(6) Separately stated optional insurance charges, maintenance or warranty contracts.

(B) Tax Application. Tax applies to fair rental value for all periods during which the mobile transportation equipment is leased even though the lessee may not make the required rental payments. The lessor must pay tax at the rate in effect at the time the equipment is first leased. The tax rate will remain the same for all periods during which the equipment is leased, including the periods during the first lease of the equipment and all periods during any subsequent leases of the equipment.

Tax on fair rental value does not apply either (a) for periods during which the equipment is not leased and is merely held for lease; or (b), for periods after the lessor has formally demanded return of the equipment if the lessee wrongfully retains possession of the property and is not required to make rental payments under the lease. If mobile transportation equipment is sold while subject to an existing lease and the new purchaser elects to pay tax measured by fair rental value, the applicable tax rate during the existing lease and during all subsequent leases is the rate in effect at the time of the sale of the mobile transportation equipment to the new purchaser.